



April 4, 2001

Mr. George D. Cato
Deputy General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR2001-1330

Dear Mr. Cato:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 145648.

The Texas Department of Health (the "department") received a request for "documentation relating to findings of neglect in an acute care facility," including a specified investigative report and related documents. You state that the department will release some of the requested information. You claim that the remaining information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted.¹

You acknowledge that the department failed to comply with section 552.301(b) of the Government Code in asking for this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) provides that "[t]he governmental body must ask for the attorney general's decision and state the exceptions that apply . . . not later than the 10th business day after the date of receiving the written request [for information]." Gov't Code § 552.301(b). Section 552.302 provides that "[i]f a governmental body does not request an attorney general decision as provided by Section 552.301 . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302.

¹This letter ruling assumes that the submitted representative samples of responsive information are truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes the department to withhold any responsive information that is substantially different from the submitted information. See Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

In this instance, you assert that the records in question should not be disclosed because they are confidential by law. Generally, the operation of section 552.302 can be overcome by a demonstration that information is deemed to be confidential by some source of law outside the Public Information Act, and therefore is excepted from disclosure under section 552.101 of the Government Code, or that the interests of a third party are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Therefore, we will address your claim that the information at issue is confidential under section 552.101.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that is made confidential by other statutes. You claim that one of the submitted documents is confidential under section 552.101 in conjunction with section 261.201 of the Family Code. Section 261.201(a) of the Family Code provides in relevant part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You indicate that the document in question relates to the report and investigation by the department of a complaint of abuse or neglect of a child in a facility licensed by the department. You state that rule 1.207 of chapter 25 of the Texas Administrative Code, which you indicate was adopted by the department under section 261.201(a), does not permit this document to be released to this requestor. Based on your representations and our review of the document in question, we conclude that it is confidential under section 261.201(a) of the Family Code. *See also* Open Records Decision No. 440 at 2 (1986) (discussing predecessor statute). Therefore, the department must withhold that document from the requestor under section 552.101 of the Government Code.

The department claims that two other submitted documents are confidential under section 48.101 of the Human Resources Code. Section 48.101 provides in relevant part:

(a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:

(1) a report of abuse, neglect, or exploitation made under this chapter;

(2) the identity of the person making the report; and

(3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

Hum. Res. Code § 48.101(a). You indicate that the documents at issue relate to reports and investigations by the department of abuse, neglect, or exploitation of elderly or disabled persons in facilities licensed by the department. *See id.* § 48.051. You assert that section 48.101 and regulations adopted by the department under the statute do not permit the release of the information in question to this requestor. *See id.* § 48.101(d)-(e); 25 T.A.C. § 1.207. Based on your representations and our review of the documents in question, we conclude that they are confidential under section 48.101(a) of the Human Resources Code and thus also must be withheld from the requestor under section 552.101.

Lastly, we address the submitted records that you describe as “statistical reports of abuse, neglect and exploitation information.” You indicate that this information “was taken directly from . . . abuse and neglect records” that are governed by sections 261.201 of the Family Code and 48.101 of the Human Resources Code. You explain that the department “believes that the statistical information sheets must be withheld because the information contained in the sheets relates to the investigative reports.” You assert that “there is no provision in the law for releasing abuse and neglect statistical information.” We have carefully considered the department’s position. But your arguments do not persuade us that the submitted statistical information qualifies as a confidential file, report, record, communication, or working paper used or developed in an investigation, or in providing services as a result of an investigation, under either section 261.201 of the Family Code or section 48.101 of the Human Resources Code. *See Fam. Code* § 261.201(a), *Hum. Res. Code* § 48.101(a). Therefore, the submitted statistical information is not excepted from disclosure under section 552.101 of the Government Code and must be released to the requestor. *See Gov’t Code* § 552.302; *Open Records Decision Nos. 478 at 2 (1987)* (stating that as a general rule, statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to the public), 658 at 4 (1998) (stating that statutory confidentiality provision must be express, and a confidentiality requirement will not be implied from the statutory structure).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. *Gov’t Code* § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the

full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

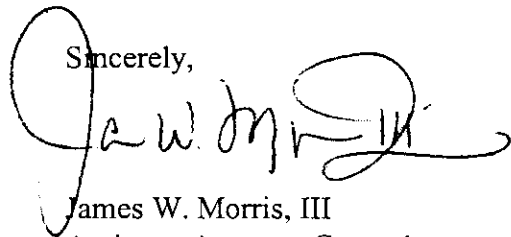
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J W Morris III', written over the word 'Sincerely,'.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/er

Ref: ID# 145648

Encl: Marked documents

cc: Ms. Brenda T. Strama
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(w/o enclosures)